

# Lancaster County

## Department of Corrections

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FCC Mail Room

March 3, 2015

Chairman Tom Wheeler  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Commissioner Mignon Clyburn  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Commissioner Jessica Rosenworcel  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Commissioner Ajit Pai  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Commissioner Michael O'Rielly  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

RE: Rebuttal to September 15, 2014 - INMATE CALLING Vendor Proposal - WC Docket 12-375

Dear Chairman Wheeler; Commissioner Clyburn; Commissioner Rosenworcel;  
Commissioner Pai; and Commissioner O'Rielly:

The Lancaster County Department of Corrections would like to thank the FCC ("Commission..") for the opportunity to express our concerns relative to the above referenced consensus proposal (the "Proposal") submitted to the Commission by Securus Technologies, Inc. ("Securus"); GlobalTel\*Link Corporation ("GTL"); Telmate, LLC ("Telmate"). The stated purpose of the proposal is compromise and consensus with respect to the framework for the treatment of interstate and intrastate Inmate Calling rates going forward. The Proposal recommends adoption of revised interstate and intrastate rate caps, recommendations for site commissions to the extent they are authorized, recommendations for ancillary charges and access and recommendations for enforcement and compliance.

### I. JURISDICTIONAL ISSUES

The Proposal seeks Commission action to impose both interstate and intrastate rates and charges, obviously presuming the Commission will preempt states in the regulation of Inmate Calling Services. Preemption of intrastate regulatory authority over Inmate Calling is a matter under review by the Commission in the existing Further Notice of Proposed Rulemaking (FNPRM) under this Docket. The Commission has not ruled on whether it will preempt any or all state regulatory authority. Consequently, Commission consideration of matters that are clearly multi-jurisdictional is premature.

While separate interstate rates may be established for Inmate Calling Service providers, the schedule of approved ancillary charges cannot be separated by regulatory jurisdiction. Commission adoption of recommendations in the Proposal, without the participation of and consent by the states, is tantamount to preempting state regulatory authority over these matters.

### **Site Commissions**

Section III C 3 In the Commission's Order for this Docket released September 26, 2013, explains development of the Commission interim interstate rate caps. Footnote 273 in the Order states:

"Because we conclude site commissions are not part of the cost of inmate calling services, we do not include the site commission profits in setting either the debit, prepaid or collect rate caps."

Since the Commission's existing \$0.25/min (collect) and \$0.21/min (prepaid) rate caps already exclude site commission profits, it is unreasonable and intrusive for the Commission to dictate how any provider chooses to utilize their net profits, whether those net profits are shared with investors, with confinement facilities, or with both. Paragraph 58 in the Commission's Order supports this conclusion:

"We do not conclude that Inmate Calling Service providers and correctional facilities cannot have arrangements that include site commissions. We only conclude that, under the Act, such commission payments are not costs that can be recovered through intrastate calling rates."

Following implementation of the Commissions rate caps, any subsequent sharing of net profits by a provider with their investors or with confinement facilities has no direct or indirect bearing on the prices paid by inmates and inmate families. Consequently, any claim that site commissions paid after implementation of the rate caps somehow drives up the prices paid by inmates and their families is completely fallacious and any assertion that precluding site commissions somehow benefits inmates and inmate families is likewise flawed. In fact, the opposite is true. Since the Commission excluded site commission profits when it set the rate caps, the preclusion of such payments now serves no justifiable purpose. Such action needlessly penalizes jails of revenue used to fund inmate programming while incarcerated.

Intrastate inmate calling rates that are equal to or lower than the Commission's interstate rate caps similarly exclude site commission profits. Therefore, Commission rules that preclude any provider from sharing its net profit



with confinement facilities in Lancaster County, or any county within the State of Nebraska, constitutes unwarranted and unwelcome federal intrusion into intrastate commerce. Article 1, Section 8, Clause 3, of the Constitution empowers Congress "to regulate commerce with foreign nations, and among several states, and with the Indian tribes." Interstate commerce, or commerce among the several states, is the free exchange of commodities between citizens of different states across state lines. Under the 10th Amendment to the U.S. Constitution, the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people. Among those powers reserved to the states is the regulation of intrastate commerce.

Paragraph 58 in the Commission's Order establishes the Commission's obligations:

"Our statutory obligations relate to the rates charged to end users, the inmates and the parties whom they call. We say nothing in this Order about how correctional facilities spend their funds or from where they derive."

Yet, that is exactly what the proposal does. When intrastate rates are equal to or lower than the Commission's rate caps, the Commission will have achieved its statutory obligations with respect to rates charged the end users, the inmates and the parties whom they call. Any site commissions paid to confinement facilities thereafter have no effect whatsoever on prices paid by end users. Therefore, Commission restrictions on such profit sharing arrangements between providers and confinement facilities engaged in intrastate commerce exceed the commission's statutory obligations. Moreover, the restrictions constitute an unjustified and unnecessary federal intrusion into the funding for State, County and local jails.

In Nebraska, Sheriffs and Corrections Directors in various jurisdictions within this state operate canteens and inmate telephone systems in an effort to normalize as much as possible the inmates' detention. Similar statutes likely exist in other states. Revenues received by inmate canteen and phone services are used to support the health and welfare of those incarcerated.

A few ancillary charges are offered for elimination but most of them are inconsequential non-recurring fees not assessed by providers in Nebraska. The list is impressive only in the amount of space occupied on the attachment wherein they are listed. In return, Commission approval is sought for a very substantial ancillary Transaction or Deposit fee applicable every time inmate families seek to deposit funds for prepaid service. The Proposal is silent on the issue of revenue sharing arrangements with third-party payment transfer services by the parties to the Proposal. The payment transfer service fees charged their customers are inexplicably much higher than the payment transfer fees charged to customers of their much smaller competitors. Instead, the Proposal ensures the current payment transfer fee overcharges are continued into perpetuity or, worse, allowed to increase. Moreover, Commission approval is sought for a provider additive to those payment transfer service fees further increasing the charges incurred by inmate families. These additives apply every time inmate families seek to deposit funds using the payment



transfer services.

The Proposal leaves intact the unnecessary and exorbitant rate structure associated with charges for Pay Now and Text-To Connect services and fails to address the issue of non-refunded prepaid customer deposits. Despite appearances to the contrary, the Proposal actually increases the non-commissionable revenue reservoir used by providers to support excessive site commission payments but the surprises don't end there. The Proposal offers the grand illusion of decreased inmate rates but charges for inmate calls under the Proposal actually increase based on introduction of a new Validation Fee rate additive. With application of the Validation Fee, effective inmate rates are higher than the Commission's existing rate caps.

Parties to the Proposal seek the Commission's cooperation to reduce or eliminate not only their exposure to site commission payments; they demand the Commission hold their competitors to the same standard. At the same time, the Proposal provides for increases in both non-commissionable and commissionable revenue. Therefore, the Proposal offers significant increases in provider profits at the expense of not only State prisons, County and local jails but the inmates and their families.

This approach is seriously flawed and requires the Commission to insert itself into matters of intrastate commerce that are properly reserved for the states. We suggest an approach that allows the Commission to achieve its statutory obligations expressed in paragraph 58 of the Commission's Order: "Our statutory obligations relate to the rates charged to end users, the inmates and the parties whom they call".

Thus far, the Commission has addressed only interim rates, allowing unrestrained provider control over the remaining sources of revenue that are used to subsidize excessive site commissions. We attempt to address all sources of inmate calling revenue and believe this approach successfully achieves the results the Commission seeks. Adoption of recommendations with respect to ancillary fees, caps on charges for Pay Now and Text-To Connect Services and strict requirements for providers to refund the prepaid deposits of their customers will provide substantial reductions in the total charges paid by inmates and their families, likely exceeding the economic impact of the Commission's rate caps.

Lancaster County Corrections contends that once commissionable and non-commissionable charges are capped, we will have achieved our own statutory obligations for ensuring the total charges assessed inmates and the ones they call are fair and reasonable. Thereafter, any sharing of the provider's net profit with the facilities they serve is a matter of public policy that lies completely outside the regulator's jurisdiction. Moreover, after imposition of caps on all rates and fees, any sharing of provider net profit via site commissions has no impact at all on the charges paid by inmates and their families; nor will elimination of them result in savings for inmate calling customers. Precluding them can only be construed as punitive action directed at State, County and local governments without cause.

My department commends the Commission for the progress it has accomplished



thus far in reforming inmate calling services, but make no mistake; far more significant progress is within reach. The Commission capped rates for interstate calls, the smallest category of usage revenue at state prisons and county jails. Intrastate calls make up the majority of all inmate calls. Further progress will be achieved when intrastate calling rates are similarly capped. However, far more substantial savings for inmates and inmate families are achievable in both jurisdictions when all sources of provider revenue are scrutinized to the same degree as calling rates and site commissions. We urge the Commission to avoid shortcuts in the ratemaking process that stop short of achieving savings in the total charges assessed to inmates and inmate families.

## **II. RATE CAPS**

The Proposal offers a modest \$0.01 reduction in the Commission's interim rate caps for both interstate and intrastate traffic but adds it back, and more, with the proposed Validation Fee. The record in the Commission's proceeding under this docket recognizes that there are lower costs for serving prisons than county jails. Cost support provided to the Commission demonstrates substantially lower average costs on a per-minute basis for prisons than county jails. In the FNPRM for this Docket, the Commission is considering separate rates for prisons and jails as well as separate rate structures for various size facilities. Lancaster County Corrections urges the Commission to continue its work in studying the differences in costs based on facility type/size and believes the Commission will ultimately come to the same conclusion for the need for separate rate structure according to facility type.

Parties to this Proposal are the nation's primary providers of inmate calling services to prisons and county jails and should, therefore, be expected to incur lower average costs of service on a combined facility basis than competitors that almost exclusively serve jails. The Proposal essentially requires no cost justification for the proposed rates unless the rates are found to be insufficient for serving the higher cost jails. Only then does the Proposal contemplate any requirement whatsoever for cost justification. Clearly, the Proposal is skewed in favor of providers that currently serve lower cost prisons while squeezing even further the profit margin of competitors attempting to serve the nation's smaller jails.

From Page 3 in the Proposal:

"As the Commission has determined, where site commission payments exist, they are a significant factor contributing to high rates." "The per-minute rate caps proposed above are feasible for the parties only if implemented in conjunction with corresponding reductions in site commission payments."

Regulation of interstate inmate calling began in 2013 with release of the Commission's Order for Docket 12-375. The interim rate caps were not implemented until February 2014. Several other states capped intrastate rates years before the Commission determined interstate inmate calling rates should be regulated.

Despite rates capped 5 years earlier, at revenue levels that approximate those from application of the Commission's current rate caps, site commissions continued to



escalate. The same rates applied to all providers; therefore, the escalation of site commissions was driven by other sources of inmate calling revenue.

My department asserts the proliferation of excessive ancillary fees, not call rates, is the most significant contributor toward escalating site commission offerings. Who pays those ancillary fees? Inmates and inmate families must bear them and they are a substantial proportion of the total charges. Had States and Local jurisdictions effectively constrained and capped ancillary fees 5 years ago, when intrastate call rates were capped, we are extremely confident that excessive site commissions would not be an issue and total inmate calling charges borne by inmate families would be significantly lower. The proposed Order should limit and cap ancillary fees to a far greater extent than recommended in the Proposal submitted by Securus, GTL, and Telmate.

The Proposal asserts that rates are driving inflated site commissions. Based on our experience, we contend that the parties to the Proposal are purposely diverting the Commission's attention from their most egregious abuses with respect to inmate charges - ancillary fees. It is ancillary fees, not rates, that led to excessive site commissions and only with more significant reductions in ancillary fees than is recommended in this Proposal will total charges on inmates and their families be significantly reduced.

Make no mistake, eliminating site commissions will have an adverse impact on inmates as well as the funding for State, County and local jails and prisons. We urge the Commission to first address excesses in all sources of provider revenue before making any sweeping changes that are detrimental to the nation's penal system. When rates and ancillary charges together are reasonably and effectively capped, voluntary site commissions offered thereafter are a non-issue that has no bearing whatsoever on the prices paid by inmates and their families.

The Rate Cap recommendations in the Proposal are not in the best interests of inmates, inmate families, the inmate calling industry as a whole, and the states that are exercising regulatory jurisdiction over intrastate inmate calling.

### **III. ANCILLARY FEES**

The Proposal offers to eliminate certain ancillary fees but safeguards others. As heretofore discussed, any schedule of ancillary fees applies to both the interstate and intrastate jurisdictions. Therefore, Lancaster County Corrections objects to any imposition of ancillary fees for intrastate inmate calling that provide for excess revenue via the adoption of additional ancillary fees.

Of the proposed ancillary charges offered for elimination as shown on the Attachment to the Proposal, Lancaster County Corrections proposes a prohibition of all of them except for the Federal Regulatory Cost Recovery Fee and the USF Administration Fee. We assert that these regulatory fees should be passed through to Nebraska consumers only when a Commission Order or Commission approved tariff identifies the specific fee or maximum fee providers are authorized to assess Nebraska consumers for interstate services.

The Proposal offers to eliminate certain ancillary. Consequently, the litany of ancillary fees included in the Attachment, though impressive in terms of their number, have little practical effect with respect to inmate calling provider revenue in Nebraska. Furthermore, we make note that several of the inmate calling providers serving Nebraska confinement facilities do not currently assess these fees.

The revenue impact of fees recommended for Commission adoption in the Proposal is substantial and increase ancillary fee revenue in Nebraska far in excess of any reductions in revenue associated with the token list of ancillary fees offered up for elimination.

#### **Transaction or Deposit Fee**

The Proposal seeks approval to charge a \$7.95 fee for every transaction or deposit. Under this Proposal, this fee of \$7.95 would be significant considering that most cash deposits at kiosks are very small. The Proposal makes no mention of whether the \$7.95 fee applies to payment by check, money order, or online banking which we contend is basic inmate calling service and provided at no charge. It is our understanding that the \$7.95 fee would also be applicable to transfers from the inmate's commissary account. Such transfers are very small. Consequently, the \$7.95 transaction fee will frequently exceed the amount of the transfer. Commissary operators typically charge 5% of the transferred amount. Lancaster County Corrections does not charge a fee for phone calls paid from their commissary account. The Proposal does not address the applicability of this fee to Prepaid Inmate Calling Cards.

#### **Payment Transfer Fee**

The Proposal seeks Commission approval of a \$2.50 additive to the fees charged by third-party transfer services such as Western Union and Money Gram. The implication is that fees charged by Western Union and MoneyGram "are what they are". This is untrue. Inmate calling providers can contract for lower payment transfer fees for their customers from Western Union and MoneyGram. Customers of PayTel, CenturyLink, and NCIC, among others, are charged payment transfer fees of \$5.95 and less by these same third-party services. If inmate phone service within each facility was competitive, these providers would likely seek the lower priced payment plans offered by their competitors.

Instead, the parties to this proposal contract for Western Union's more expensive "Quick Collect" service at \$9.95. Records show that a portion of the \$9.95 fee imposed by Western Union is shared with providers. Additionally, Securus and GTL currently have arrangements with Western Union for additives to the \$9.95 Quick Collect charge. Securus customers are charged \$11.95 and GTL customers are charged \$10.95 by Western Union. Everything in excess of \$9.95 is turned over to the provider. Similar arrangements exist with MoneyGram. That these providers are now seeking another additive on top of what they are already getting from third-party payment transfer services is simply incomprehensible. The providers are not providing the transfer service. What justification is there for a provider additive



to the payment transfer fee other than a dubious claim is that it is to cover administrative costs for taking the customer's money?

Providers should be mandated to justify why they are unable to obtain the same payment transfer fees from third-party payment transfer services that are charged the customers of their competitors. We should also require providers to submit an affidavit affirming that they share in no portion of the revenue associated with third-party payment transfers. We urge the Commission to investigate the abuses associated with third-party payment transfer fees and to take similar action to end these abuses.

#### **Validation Fee**

Validation costs were included in the data used by the Commission to establish the existing rate caps. Consequently, these costs are already accounted for in the existing call rates. Call validation is fully automated and involves real-time "dips" in to a Telcordia database for which the provider pays a flat subscription on a quarterly basis and/or dips into the Line Information Database (LIDB). The Proposal seeks authorization to apply an 8% additive to the base rate of each call, which is the equivalent to applying the additive to each call minute. Therefore, \$0.019 would be added to the proposed \$0.24/min rate for collect calls and \$0.016 to the proposed \$0.20/min rate for prepaid calls. The effective per minute rates for those calls under the Proposal will then be \$0.259/min and \$0.216/min, respectively. Essentially, the Proposal is a bait and switch; baiting the Commission with a \$0.01/min reduction in the Commission's capped rates and switching it with an additive that results in higher effective calling rates. We urge the Commission to reject this ludicrous offer.

#### **Convenience or Premium Payment Options**

Currently, the only inmate calling providers offering "Pay Now" (collect to a credit card) and Text-To Connect (billed by a wireless provider) services are the three parties that submitted the Proposal. GTL added these services immediately preceding or immediately after the Commission implemented its interim rate caps in February, 2014. Securus and GTL rely on 3CI interactive as their third-party provider for both services. Both charge \$14.99 for "Pay Now" calls and \$9.95 for their Text-To Connect offering. A call duration maximum applies, typically 15 minutes. The site commission that apply to these calls are extremely low; \$1.60 of the \$14.99 Pay Now call price (11%) and \$0.30 of the \$9.95 Text-To Connect call price (3%). Clearly, such calls afford these providers an opportunity to reap maximum revenues which add substantially to their profitability.

Interestingly, none of the other inmate calling providers offer these services to their customers. Instead, they direct wireless recipients of sent-collect inmate calls to their service center for purposes of setting up a prepaid account. Using a debit/credit card, the account can be established while the inmate remains on hold. Securus, Telmate, and GTL could do this too but they choose otherwise. What the



parties to the proposal offer the Commission in return for safeguarding this "cash cow" is what their competitors already provide; that is information on how to open a prepaid account.

We take the position that such calls create an opportunity for providers to circumvent the rate caps and that these calls are a source of revenue used to support excessive site commissions on other inmate calls. Despite assurances to the contrary, allowing such enormously profitable calls to continue in excess of the rate caps can only incentivize these providers to drive as many inmate calls as possible away from prepaid service toward this more profitable alternative. We propose a prohibition of such calls. Instead, we suggest a call duration maximum and apply the approved collect call rates to the imputed call duration. The provider is authorized to add the approved credit card processing fee to Pay Now calls and the collect call bill processing fee to Text-To Connect calls. The fee for both credit card payments and bill processing is capped at say \$3.00. Based on a \$0.25/min collect call rate, the price for each call is capped at \$6.00. The provider is provided full flexibility with respect to division of revenue with the third-party provider. Nevertheless, the call minutes are indeed priced in accordance with the prescribed rate caps.

#### **IV. RECOMMENDATION**

We recommend that the Commission reject the Proposal and continue its efforts toward implementing meaningful and effective inmate calling reforms. The Proposal is nothing less than a desperate and concerted effort by Securus, Telmate, and GTL to protect their profitability in prisons and county jails; at the expense of inmates and inmate families. Most of the ancillary fees recommended for elimination are not currently applicable. Consequently, they constitute a hollow offering in exchange for onerous ancillary fees applicable to every deposit and transaction which will result in substantial increases to the total charge borne by inmate and inmate families. Additionally, the Proposal pulls a "bait and switch", offering a minimal \$0.011 per min rate reduction in one hand but adding that amount and more to the capped rates with the other.

#### **Alternative Proposal**

Except for the parties to the Proposal, inmate calling providers, for the most part, already comply with our proposed schedule of ancillary fees. Some charge lower ancillary fees than those proposed. There is no justifiable reason why the parties to this Proposal should continue charging higher ancillary fees than those charged by their much smaller competitors. Commission adoption of the recommended ancillary fees in this Proposal, on the other hand, will increase the total charges paid by inmates and inmate families served by Securus, GTL, and Telmate. Additionally, inmates and inmate families served by their competitors may experience even higher increases in total charges should those providers increase their fees, which are already lower than those of Securus, GTL and Telmate, to match the Commission authorized ancillary fees.

We further recommend that the Commission prohibit charges for Pay Now and Text-To Connect (Convenience or Premium Payment Options). Failure to address these calls will allow providers to circumvent the Commission's rate caps and incentivize

providers to redirect inmate calls from regulated to unregulated rate structures. The substantially higher revenue associated with these calls creates a reservoir for subsidizing excessive site commissions. Finally, we recommend the Commission adopt our approach which directs providers to refund unused prepaid account balances without the assessment of refund or dormancy charges.

Respectfully yours,

A handwritten signature in dark ink, appearing to read "Michael Thurber". The signature is fluid and cursive, with the first name "Michael" written in a larger, more prominent script than the last name "Thurber".

Michael Thurber  
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